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Attorney for Plaintiff
AB Staffing Solutions, LLC

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

AB Staffing Solutions, LLC,
an Arizona limited liability company,

Plaintiff,

vs.

AB Medical Staffing, LLC,
an Indiana limited liability company,

Defendant.

Case No. _____

COMPLAINT

For its Complaint, Plaintiff AB Staffing Solutions, LLC (“Plaintiff” or “ABSS”) alleges as follows:

PARTIES

1. Plaintiff ABSS is a limited liability company formed and existing under the laws of the State of Arizona on June 13, 2002.

2. Since its inception, ABSS has done business across the United States with its principal place of business at 3451 S. Mercy Road, Suite 102, Gilbert, AZ 85297.

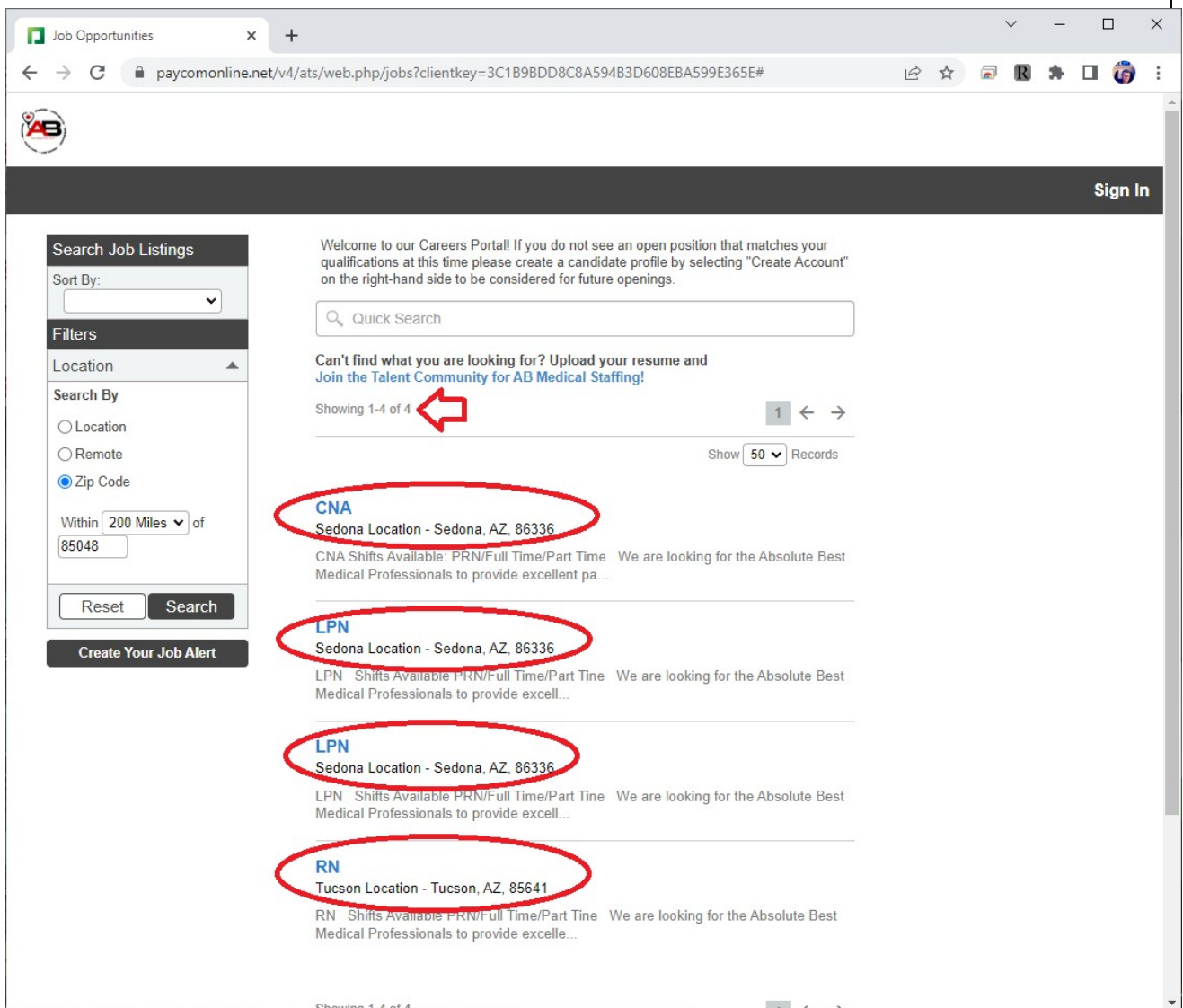
3. Defendant AB Medical Staffing, LLC (“Defendant” or “ABMS”) is a limited liability company formed and existing under the laws of the State of Indiana on January 7, 2021.

JURISDICTION/VENUE

4. Defendant is subject to personal jurisdiction in the State of Arizona because it actively conducts business in this state and Plaintiff's claims arise directly from Defendant's business activities in this state.

5. Plaintiff and Defendant each offer medical/healthcare staffing services and job placement for medical professionals.

6. Defendant has availed itself of the privilege of conducting business in Arizona by advertising open positions in Sedona and Tucson, Arizona via online ads shown below which contain Defendant's logo and trademark.



7. Defendant is also subject to personal in Arizona because it has intentionally infringed Plaintiff's valuable trademarks knowing Plaintiff is a resident of this state and knowing Plaintiff would suffer harm in this forum as a direct and foreseeable result of Defendant's actions. *See, e.g., Int'l Aero Prod., LLC v. Aero Advanced Paint Tech., Inc.*, 325 F. Supp. 3d 1078, 1085 (C.D.Cal. 2018) (explaining, "personal jurisdiction [in a trademark action] does not hinge on the sale of the accused products in the forum state; all that a plaintiff needs to show is that the defendant 'willfully infringed' and that the defendant knew that the plaintiff had its principal place of business in this district.") (citing *Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002)).

8. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this case involves claims arising under federal law, including the Lanham Act, 15 U.S.C. §§ 1114 & 1125.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because the events giving rise to this action occurred in the State of Arizona.

FACTUAL BACKGROUND

10. In business for over 20 years, ABSS is a nationwide leader in travel nurse and healthcare staffing.

11. Among other things, ABSS conducts business via its website located at <https://www.abstaffing.com/> where it currently lists more than 70,000 active nursing and healthcare related employment listings for work nationwide.

12. In connection with offering these services, ABSS owns numerous state and federal trademarks and other intellectual property rights relating to its business.

13. Among other things, ABSS currently owns the following federally registered active trademarks which are reflected in Exhibit A attached hereto and which are specifically incorporated by reference:

	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead	Class(es)
1	87683972	5507122	AB STAFFING SOLUTIONS	TSDR	LIVE	035
2	87674391	5501832	AB STAFFING SOLUTIONS	TSDR	LIVE	035
3	87674385	5501831	AB STAFFING SOLUTIONS	TSDR	LIVE	035

14. Each of these registered marks apply to trademark class 35 which includes the following specific services: “Employment staffing in the field of nursing and allied health professionals; Temporary or Contract Healthcare Staffing Services.”

15. ABSS has continuously used these marks in commerce since at least April 2008, including the current version of its logo (Reg. No. 5501832), shown below:



16. The prominent and distinctive features of Plaintiff’s marks include the use of stylized overlapping/joined letters “AB”, a plus sign which is commonly understood to symbolize the “medical cross” widely used across the medical and healthcare industry, and the word “staffing”.

17. Over the years, ABSS has expended substantial sums of time and money to advertise, promote, and market its brand on a national level. As a result, ABSS has grown to become a national market leader in this field, and it has earned a highly favorable reputation among medical providers and members of the healthcare community.

SUMMARY OF DEFENDANT’S ACTIONS

18. Defendant ABMS was formed in Indiana in early 2021 and has only been in business for a short period of time.

19. On January 14, 2021, Defendant created a website located at <https://abmedicalstaffing.com/> where it offers services that directly compete with those offered by ABSS on its website <https://www.abstaffing.com/>. Screenshots from Defendant’s website are attached hereto as Exhibit B and incorporated herein by reference.

20. Defendant's website prominently features a logo, shown below, which incorporates many of the same elements of Plaintiff's registered trademark, including stylized overlapping letters "AB", a medical cross, and the word "staffing".



21. On March 2, 2022, Defendant filed an application with the United States Patent and Trademark Office seeking to register the mark shown above. A copy of Defendant's application, designated USPTO Serial No. 97291576 is attached hereto as Exhibit C.

22. At or before the time it applied to register the above-shown mark, Defendant had actual knowledge of Plaintiff's registered trademarks reflected in Paragraph 11 above.

23. At or before the time it applied to register the above-shown mark, Defendant had constructive knowledge of Plaintiff's registered trademarks reflected in Paragraph 13 above.

24. On November 29, 2022, Plaintiff, acting through counsel, sent a letter to Defendant demanding that Defendant cease its infringing activities. A copy of this letter is attached hereto as Exhibit D.

25. Defendant did not respond to Plaintiff's demand letter.

FIRST CAUSE OF ACTION
(Trademark Infringement — 15 U.S.C. §§ 1111 & 1114)

26. Plaintiff repeats and incorporates by reference the allegations of ¶¶ 10–25 above.

32. Based on the foregoing, Plaintiff is entitled to injunctive relief and to recover Defendant's profits, actual damages, enhanced profits and damages, costs, and reasonable attorneys' fees under 15 U.S.C. §§ 1114, 1116, 1117 and 1125.

34. Pursuant to 15 U.S.C. § 1119, a federal district court “may determine the right to registration, order the cancelation of registrations, in whole or in part, restore canceled registrations, and otherwise rectify the register with respect to the registrations of any party to the action” (emphasis added).

35. As alleged above, Defendant has, in connection with USPTO Serial No. 97291576, sought to register a mark which is confusingly similar to Plaintiff's previously registered marks. If Defendant's confusingly similar mark were registered, Plaintiff would be damaged as a direct result.

36. Pursuant to 15 U.S.C. § 1052(d), no trademark may be registered if the mark "[c]onsists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive"

37. Pursuant to 15 U.S.C. § 1064, a registered mark may be cancelled on various grounds including that the mark is being used to "misrepresent the source of the goods or services on or in connection with which the mark is used".

38. As alleged above, Defendant has sought registration of a mark, in connection with USPTO Serial No. 97291576, which closely resembles Plaintiff's previously registered marks, as reflected in Paragraph 13 above, and which is likely to cause confusion, mistake, or deception when used in connection with the services offered by Defendant.

39. As a result, Plaintiff is entitled to an order finding Defendant's mark reflected in USPTO Serial No. 97291576 is not subject to registration pursuant to 15 U.S.C. § 1052(d) and that in the event the mark is improperly registered during the pendency of this action, it is subject to cancellation pursuant to 15 U.S.C. § 1064.

THIRD CAUSE OF ACTION

(Anti-Cybersquatting Piracy Act — 15 U.S.C. §§ 1125(d))

40. Plaintiff incorporates by reference the allegations of ¶¶ 10–25 above.

41. In relevant part, 15 U.S.C. § 1125(d)(1)(A) provides –

(A) A person shall be liable in a civil action by the owner of a mark ... if, without regard to the goods or services of the parties, that person—

(i) has a bad faith intent to profit from that mark ... and

(ii) registers, traffics in, or uses a domain name that —

- (I) in the case of a mark that is distinctive at the time of registration of the domain name, is identical or confusingly similar to that mark; [or]
- (II) in the case of a famous mark that is famous at the time of registration of the domain name, is identical or confusingly similar to or dilutive of that mark

42. On January 14, 2021, Defendant registered the domain name <https://abmedicalstaffing.com/> which it has used to offer services that directly compete with those offered by ABSS on its website <https://www.abstaffing.com/>.

43. The domain name <https://abmedicalstaffing.com/> is confusingly similar to the registered trademarks owned by Plaintiff as alleged in Paragraph 13 above.

44. At the time Defendant registered the domain name <https://abmedicalstaffing.com/>, Plaintiff's marks were "famous" within the meaning of 15 U.S.C. § 1125(d)(1)(A)(ii)(II).

45. Defendant had a bad faith intent to profit from the use of the domain name within the meaning of 15 U.S.C. § 1125(d)(1)(B) because, among other things:

- a. Defendant knew of Plaintiff's pre-existing rights in the registered trademarks owned by Plaintiff as alleged in Paragraph 11 above prior to registering the domain name <https://abmedicalstaffing.com/>;
- b. Defendant intended to divert customers from Plaintiff by using a domain name which was confusing similar to both Plaintiff's registered trademarks and also to the domain name used by Plaintiff, <https://www.abstaffing.com/>.

46. Pursuant to 15 U.S.C. § 1125(d)(1)(C), Plaintiff is entitled to an order requiring the transfer of the domain name <https://abmedicalstaffing.com/> from Defendant to Plaintiff.

JURY DEMAND

Plaintiff demand trial by jury as to all issues so triable.

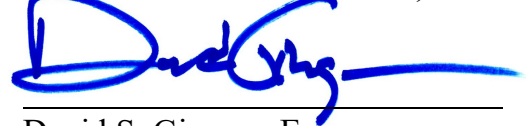
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

- A. For damages according to proof at trial;
- B. For preliminary and permanent injunctive relief prohibiting Defendant from infringing any of Plaintiff's trademarks;
- C. For an order transferring ownership of the domain name <https://abmedicalstaffing.com/> from Defendant to Plaintiff pursuant to 15 U.S.C. § 1125(d)(1)(C);
- D. For an award of all attorney's fees and costs of suit incurred herein pursuant to 15 U.S.C. § 1117(a);
- E. For an award of taxable costs pursuant to 28 U.S.C. § 1920;
- F. For such other and further relief as the Court deems just and proper.

DATED: March 8, 2023.

GINGRAS LAW OFFICE, PLLC




David S. Gingras, Esq.
Attorney for Plaintiff

Exhibit A

Trademark Electronic Search Syst x +

tmsearch.uspto.gov/bin/showfield?f=doc&state=4805:lhv8h5.2.3

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LAST DOC

Logout Please logout when you are done to release system resources allocated for you.

Start List At: OR Jump to record: **Record 3 out of 5**

TSDR ASSIGN Status TTAB Status (Use the "Back" button of the Internet Browser to return to TESS)

 **STAFFING SOLUTIONS**


Word Mark	AB STAFFING SOLUTIONS
Goods and Services	IC 035. US 100 101 102. G & S: Employment staffing in the field of nursing and allied health professionals; Temporary or Contract Healthcare Staffing Services. FIRST USE: 20151209. FIRST USE IN COMMERCE: 20151209
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	24.17.06 - Plus symbol (+)
Serial Number	87674391
Filing Date	November 7, 2017
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	April 10, 2018
Registration Number	5501832
Registration Date	June 26, 2018
Owner	(REGISTRANT) AB STAFFING SOLUTIONS, LLC LIMITED LIABILITY COMPANY ARIZONA Suite 102 3451 S Mercy Road Gilbert ARIZONA 85297

Trademark Electronic Search System x

tmsearch.uspto.gov/bin/showfield?f=doc&state=4805:lhv8h5.2.2

Start List At: OR Jump to record: **Record 2 out of 5**

TSDR **ASSIGN Status** **TTAB Status** (Use the "Back" button of the Internet Browser to return to TESS)



Word Mark **AB STAFFING SOLUTIONS**

Goods and Services IC 035. US 100 101 102. G & S: Employment staffing in the field of nursing and allied health professionals; Temporary or Contract Healthcare Staffing Services. FIRST USE: 20151209. FIRST USE IN COMMERCE: 20151209

Mark Drawing Code (5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Serial Number 87683972

Filing Date November 14, 2017

Current Basis 1A

Original Filing Basis 1A

Published for Opposition April 17, 2018

Registration Number 5507122

Registration Date July 3, 2018

Owner (REGISTRANT) AB Staffing Solutions, LLC LIMITED LIABILITY COMPANY ARIZONA Suite 102 3451 S Mercy Road Gilbert ARIZONA 85297

Attorney of Record Alexis Campbell

Prior Registrations 4188909

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "STAFFING SOLUTIONS" APART FROM THE MARK AS SHOWN

Description of Mark Color is not claimed as a feature of the mark. The mark consists of the stylized wording "AB STAFFING SOLUTIONS", the stylized "AB" in larger letters above the wording "STAFFING" and spanning from the "A" in "STAFFING" to the "N" in "STAFFING" and the stylized wording "SOLUTIONS" beneath the wording "STAFFING", the stylized "AB" of a darker shade with an addition sign in the center of a lighter shade.


Type of Mark SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE

Trademark Electronic Search Syst x +

tmsearch.uspto.gov/bin/showfield?f=doc&state=4805:lhv8h5.2.4

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[NEXT DOC](#) | [LAST DOC](#)

[Logout](#) Please logout when you are done to release system resources allocated for you.

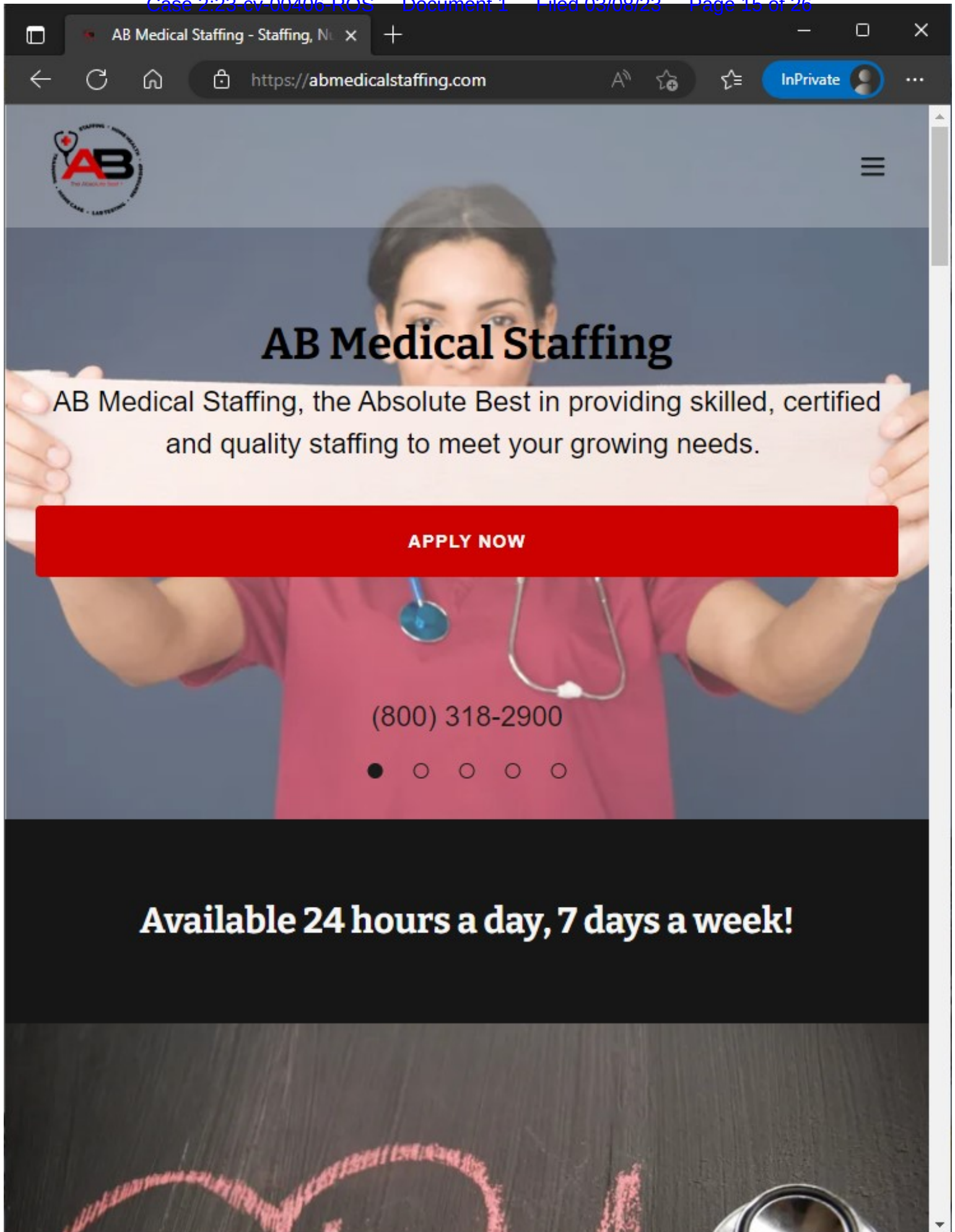
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AB STAFFING SOLUTIONS

Word Mark	AB STAFFING SOLUTIONS
Goods and Services	IC 035. US 100 101 102. G & S: Employment staffing in the field of nursing and allied health professionals; Temporary or Contract Healthcare Staffing Services. FIRST USE: 20151209. FIRST USE IN COMMERCE: 20151209
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	87674385
Filing Date	November 7, 2017
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	April 10, 2018
Registration Number	5501831
Registration Date	June 26, 2018
Owner	(REGISTRANT) AB STAFFING SOLUTIONS, LLC LIMITED LIABILITY COMPANY ARIZONA Suite 102 3451 S Mercy Road Gilbert ARIZONA 85297
Attorney of Record	Alexis Campbell

Exhibit B



AB Medical Staffing - Staffing, Nt x +

https://abmedicalstaffing.com

InPrivate

AB Medical Staffing


AB Medical Staffing, the Absolute Best in providing skilled, certified and quality staffing to meet your growing needs.

APPLY NOW

(800) 318-2900

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Available 24 hours a day, 7 days a week!



Where are you when you need us!

AB Medical Staffing is here to partner with your facility.

As a leading provider of rehabilitation, nursing, and allied health personnel in the region, we pride ourselves on our commitment to both the facilities and organizations we help staff on a permanent and temporary basis, as well as to the community of healthcare professionals we serve to help find employment. AB Medical Staffing is your premier nursing agency always hiring nurses.

[REQUEST STAFF](#)

AB Medical Staffing services are designed to be a solution-focused care partner.

Services

AB Medical Staffing's services are designed to be a solution-focused care partner. Our staff is your staff. That's the key philosophy that has positioned us as a leader in medical staffing. Our staff of nurses and aides have undergone extensive screening above and beyond state requirements. In

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InPrivate

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Seamlessness

Our supplemental Staffing Associates are dependable, innovative, hardworking, and most importantly, indistinguishable from your own staff. We provide orientation for our Nurses and CNA's that familiarize them with how to hit the ground running and assimilate as any other member of your staff.

We do not practice phantom staffing. There are no shift exchanges of names so you

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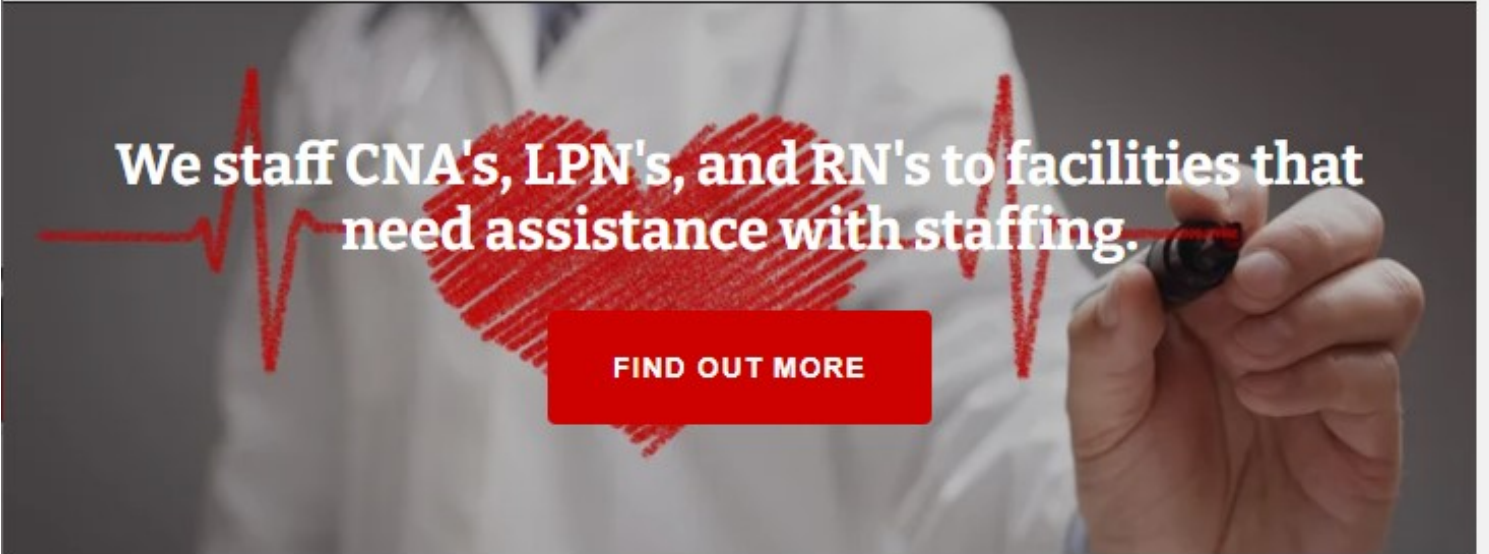

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InPrivate


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We staff CNA's, LPN's, and RN's to facilities that need assistance with staffing.

[FIND OUT MORE](#)

Read what people are saying about AB Medical Staffing



Very nice company to work with and the staff did an awesome job. We will continue to use them for our company. - Anthony R.



Nothing but professional since the beginning. -Mark D.



Professionalism

We understand that providing compassionate, professional care is essential to meeting your high standards. At AB Medical Staffing, we pride ourselves on taking care of the little things. As our partner, you will never have to worry about the little things when it comes to our Nurses and CNAs. Our staff will come to work dressed appropriately, with an understanding of their responsibilities, and ready to meet or exceed the expectations you place upon your own staff.

REQUEST STAFFING ASSISTANCE



- RNs
- LPNs
- CNAs



abmedicalstaffing.com/request-staffing

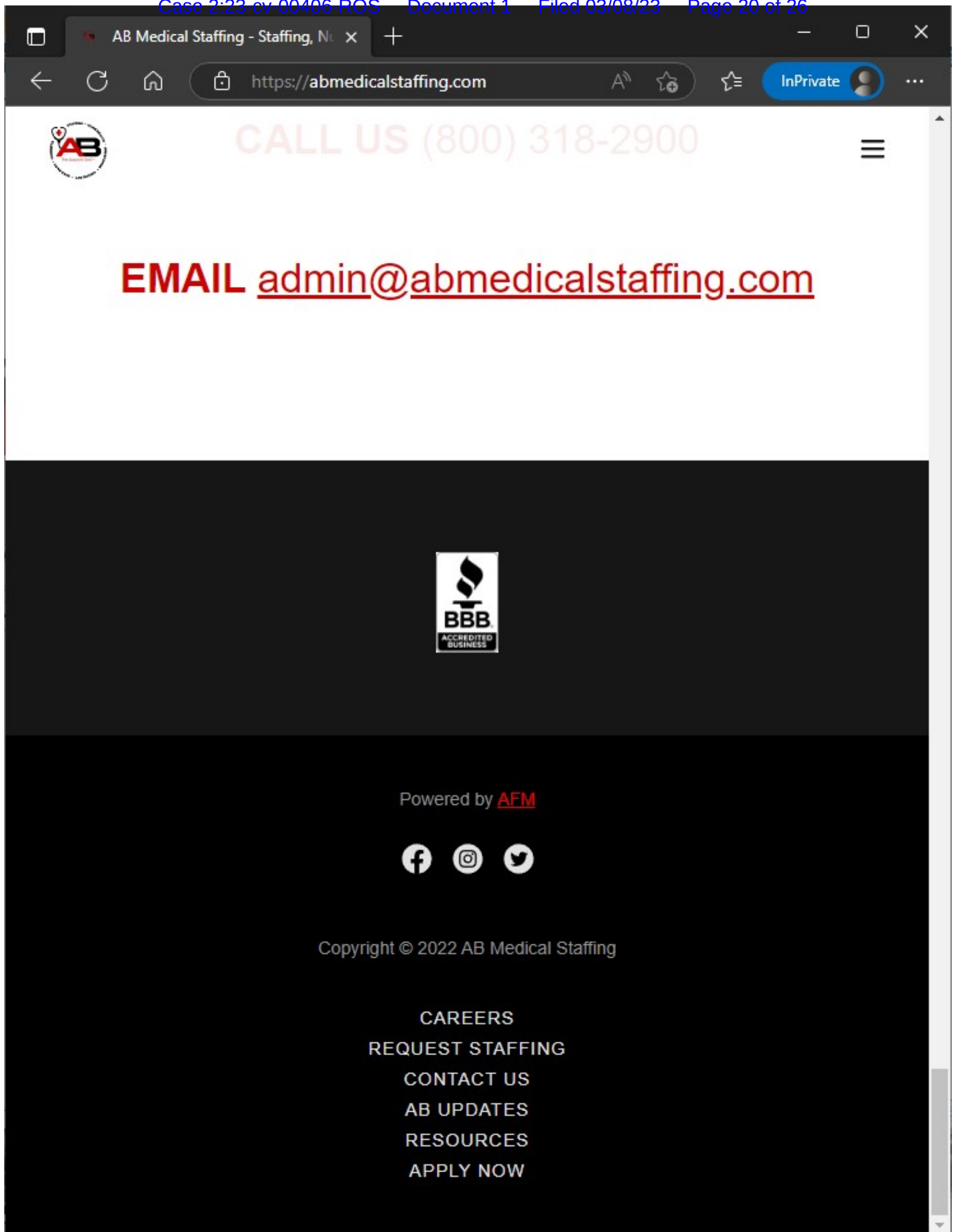


Exhibit C

**Trademarks > Trademark Electronic Search System (TESS)**

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[PREV DOC](#) | [NEXT DOC](#) | [LAST DOC](#)[Logout](#) Please logout when you are done to release system resources allocated for you.[Start](#) List At: OR [Jump](#) to record: **Record 1 out of 5**[TSDR](#)[ASSIGN Status](#)[TTAB Status](#)*(Use the "Back" button of the Internet Browser to return to TESS)*

Word Mark AB THE ABSOLUTE BEST · HOME CARE · **STAFFING** · HOME HEALTH · MENTORSHIP · LAB TESTING

Goods and Services IC 035. US 100 101 102. G & S: Employment agency services, namely, temporary and permanent placement of health care professionals; Employment staffing in the field of Nursing. FIRST USE: 20211022. FIRST USE IN COMMERCE: 20211022

IC 044. US 100 101. G & S: Consulting services in the field of healthcare; Home health care services. FIRST USE: 20211022. FIRST USE IN COMMERCE: 20211022

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 10.07.05 - Stethoscope
24.13.02 - Cross, Greek (equal sides) ; Greek cross (equal sized lines)
26.01.08 - Circles having letters or numerals as a border ; Circles having punctuation as a border ; Letters, numerals or punctuation forming or bordering the perimeter of a circle

Serial Number 97291576

Filing Date March 2, 2022

Current Basis 1A

Original Filing Basis 1A

Owner (APPLICANT) AB Medical Staffing LIMITED LIABILITY COMPANY INDIANA 5475 Broadway Merrillville INDIANA 46410

Attorney of Record Anitria Stevenson

Description of Mark The color(s) red, white, and black are claimed as a feature of the mark is/are claimed as a feature of the mark. The mark consists of a red capital letter A and a black capital letter B with the words The Absolute Best in red directly below. The words Home Care, Staffing, Home Health, Mentorship, and Lab Testing are written in a circular pattern in red letters, with a red bullet point in between each word. A black stethoscope with a red cross appears in between the words Home Care and Lab Testing.

Type of Mark SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE

Exhibit D

GINGRAS LAW OFFICE, PLLC

 4802 E. Ray Road #23-271, Phoenix, AZ 85044 • Tel: (480) 264-1400 • Fax: (480) 248-3196

November 29, 2022

Via email: admin@abmedicalstaffing.com

Ms. Britney Bynum
 AB Medical Staffing, LLC
 5475 Broadway
 Merryville, IN 46410

Re: *Demand to Cease & Desist Trademark Infringement*

To Whom It May Concern:

I am intellectual property counsel to AB Staffing Solutions, LLC (“ABSS”) based in Gilbert, Arizona. ABSS is a nationwide leader in travel nurse and healthcare staffing. ABSS’ website is: <https://www.abstaffing.com/>.

In connection with offering these services, ABSS owns numerous state and federal trademarks and other intellectual property rights relating to its business, including the following federally registered active trademarks:

	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead	Class(es)
1	87683972	5507122	AB STAFFING SOLUTIONS	TSDR	LIVE	035
2	87674391	5501832	AB STAFFING SOLUTIONS	TSDR	LIVE	035
3	87674385	5501831	AB STAFFING SOLUTIONS	TSDR	LIVE	035

Each of these registered marks apply to trademark class 35 which includes the following specific services: “Employment staffing in the field of nursing and allied health professionals; Temporary or Contract Healthcare Staffing Services.” ABSS has continuously used these marks in commerce since at least April 2008, including the current version of its logo, shown below:



Over the years, ABSS has expended substantial sums of time and money to advertise, promote, and market its brand on a national level. As a result, ABSS has grown to become a national market leader in this field, and it has earned a highly favorable reputation among medical providers and members of the healthcare community.

Ms. Britney Bynum
 AB Medical Staffing, LLC
 November 29, 2022
Page 2 of 3

I am writing to you because it has recently come to my attention that your company is using a trade name—*AB Medical Staffing, LLC*—that is virtually identical to ABSS’ registered trademarks. In addition, you are currently operating a website located at <https://abmedicalstaffing.com/> which uses a domain name that is virtually identical to ABSS’ domain, and which contains a logo that is extremely similar (confusingly so) to ABSS’ mark:



In fact, your company came to ABSS’ attention after one of its clients contacted the company and expressed confusion as to whether your company and ABSS were the same entity or were otherwise related.

This type of consumer confusion is precisely what federal and state trademark laws are intended to prevent. Specifically, as the owner of federally registered trademarks, ABSS enjoys exclusive nationwide rights to use those marks under the Lanham Act. Among other things, this means ABSS has the right to stop any competitor from using a trademark or trade name which is confusingly similar to its registered marks:

The Lanham Act sets forth that “the owner of a famous mark ... shall be entitled to an injunction against another person who ... commences use of a mark or trade name in commerce that is likely to cause dilution by blurring or dilution by tarnishment ... regardless of the presence or absence of actual or likely confusion, of competition, or of actual economic injury.”

AirWair Int’l Ltd. v. ITX USA LLC, 2021 WL 5302922, at *4 (N.D. Cal. Nov. 15, 2021) (quoting 15 U.S.C. § 1125(c)(1)).

Again, because ABSS’s registered marks are famous and distinctive and have been continuously used for more than a decade, proof of actual customer confusion would not be required to support injunctive relief against your company under the Lanham Act. However, in this instance we have evidence showing actual confusion has occurred. This would strongly support a finding that your company’s name violates ABSS’s rights under federal law; “Evidence of actual confusion by consumers is strong evidence of likelihood of confusion [supporting relief under the Lanham Act].” *Ironhawk Techs., Inc. v. Dropbox, Inc.*, 2 F.4th 1150, 1165 (9th Cir. 2021).

Ms. Britney Bynum
AB Medical Staffing, LLC
November 29, 2022
Page 3 of 3

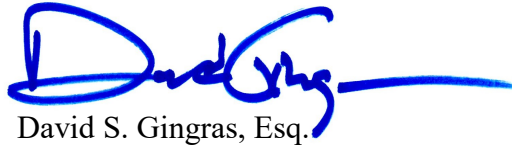
For these reasons, I am writing to demand the following:

- You must immediately cease and desist from using the name *AB Medical Staffing, LLC* in connection with providing any services that are the same or similar to those offered by ABSS;
- You must confirm, in writing, that you will refrain from using the domain name <https://abmedicalstaffing.com/> or any other confusingly similar website address in the future for the purpose of providing any services that are the same or similar to those offered by ABSS.

If you fail to provide this written confirmation to me within 20 days from the date you receive this letter, ABSS will have no choice but to proceed with appropriate legal action to protect and preserve its rights. This may include a lawsuit seeking damages for federal and state trademark infringement, which may include a request for injunctive relief as well as attorney's fees and costs as provided by 15 U.S.C. § 1117, and any other relief permitted by law.

If you have any questions or need more information, please feel free to reach me at: (480) 570-6157 or via email at: david@gingraslaw.com.

Very Truly Yours,

A handwritten signature in blue ink, appearing to read "David S. Gingras", with a long horizontal flourish extending to the right.

David S. Gingras, Esq.

cc: Matthew Mitchell, Esq.